

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



Docket No.

**74-1173**

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IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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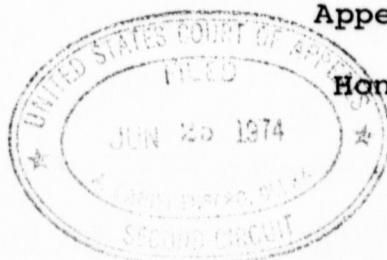
DELPHINE E. PLOURDE,  
Plaintiff-Appellee

VS.

SHERBURNE CORPORATION,  
Defendant-Appellant

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Appeal from the United States District Court  
for the District of Vermont  
Honorable James S. Holden, Chief U.S.D.J.



APPENDIX

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Bloomer & Bloomer  
Attorneys for Plaintiff-Appellee  
75 Merchants Row  
Rutland, Vermont

05701

Ryan, Smith & Carbine, Ltd.  
Attorneys for Defendant-Appellant,  
Mead Building  
Rutland, Vermont 05701

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RELEVANT DOCKET ENTRIES

<u>DATE</u>		<u>DATE ORDER</u>
<u>1972</u>		<u>JUDGMENT NO.</u>
Oct. 5	Filed Complaint	1.
" 27	" Notice of Appearance of Ryan, Smith & Carbine, Esqs., for Defendant and Defendant's Answer.	3.
<u>1973</u>		
Dec. 11	Trial by Jury begun before Judge Holden. John Bloomer, Esq., for Plaintiff, James Haugh, Esq., and Joseph O'Rourke, Esq., for Defendant.	
" "	A Jury was impaneled by the Clerk.	
" 18	Trial resumed. Robert Bloomer, Esq., also appeared for Plaintiff.	
" "	Plaintiff waives opening statement.	
" "	Defendant reserves its right to make an opening statement at this time.	
" "	The following witnesses, sworn by Clerk, were examined for Plaintiff: Delphine E. Plourde, Leo A. Denis and Martel D. Wilson, Jr.	
" "	The Deposition of Dr. Philip Radding was read to the Jury.	
" "	Delphine E. Plourde was recalled and further examined by Mr. Robert Bloomer.	
" "	At 3:50 P.M. Plaintiff rests.	
" "	Jury excused. In Chambers, attorneys present, Mr. Haugh moves for a directed verdict for Defendant, objected to by Mr. Robert Bloomer.	
" "	Decision reserved.	
" "	In open Court, Jury present, at 4:30 P.M. Jury excused until Thursday morning, December 20th, at 9:30 A.M.	

RELEVANT DOCKET ENTRIES

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DATE <u>1973</u>	DATE ORDER <u>JUDGMENT NO.</u>
Dec. 20	Trial resumed.
" "	At the Bench, attorneys present, it was ORDERED: that Defendant's Motion for a directed verdict is denied.
" "	In open Court, Jury present, Sandy Raymond Macys, sworn by Clerk, was examined for Defendant.
" "	The following witness was recalled and examined for Defendant: Martel D. Wilson, Jr. and Leo A. Denis.
" "	At 11:22 A.M. Defendant rests. Plaintiff rests. Evidence closed.
" "	Brian Bry, sworn by Clerk, was cross-examined by Mr. Robert Bloomer in rebuttal.
" "	At 1:32 P.M. Plaintiff rests in rebuttal. Defendant rests. Evidence closed.
" "	Jury excused. In Chambers, attorneys present, at the conclusion of all the evidence, Mr. Haugh renews his Motion for a directed verdict of negligence on all the grounds previously stated, objected to by Mr. Robert Bloomer.
" "	ORDERED: that Defendant's Motion for a directed verdict as it relates to the bindings is granted. As it pertains to the school instructions, decision reserved.
" "	Court and counsel discuss various items to be presented in the Charge to the Jury with some modifications made by Court.
" "	Opening arguments were made to the Jury by Mr. John Bloomer, followed by Mr. O'Rourke.
" "	Closing arguments were made to the Jury by Mr. Robert Bloomer.
" "	ORDERED: that Mr. Michael Maniery be appointed Foreman of the Jury.

RELEVANT DOCKET ENTRIES

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<u>DATE</u>	<u>DATE ORDER</u>	<u>JUDGMENT NO.</u>
<u>1973</u>		
Dec. 20	At 2:43 P.M. the Court commences Charge to the Jury, concluding at 3:24 P.M.	
" "	After Charge, Court further instructs Jury.	
" "	At 3:28 P.M. the Jury retire to deliberate the case.	
" "	In open Court, attorneys present, it is ORDERED: that Defendant's Motion as it pertains to the school instructions, is denied.	
" "	At 4:16 P.M. the Jury came into Court and report a verdict for Plaintiff to recover from Defendant \$40,000.00 dollars, Filed Interrogatories.	17.
" "	Filed Verdict for Plaintiff.	18.
" "	Filed Judgment on Jury Verdict -- It is Ordered and Adjudged that Judgment is hereby entered on the verdict of the Jury for the Plaintiff to recover from the Defendant forty thousand dollars (\$40,000.00) damages. Mailed copy to attorneys	19.
" "	Filed Request to Charge by Defendant Sherburne Corporation	20.
<u>1974</u>		
Jan. 2	Filed Deft's Motion to set aside Judgment Order and Verdict.	21
" 9	Filed Deft's Memorandum of Fact and Law & Motion to set aside Judgment Order & Verdict	22.
" 18	In Court before Judge Holden, Robert Bloomer, Esq. and John Bloomer, Esq. present for Plaintiff; James Haugh, Esq. and Joseph O'Rourke, Esq. present for Defendant, Hearing on Defendant's Motion to set aside Judgment Order and Verdict.	

RELEVANT DOCKET ENTRIES

<u>DATE</u>		<u>DATE ORDER</u>
<u>1974</u>		<u>JUDGMENT NO.</u>
Jan. 18	Statements made to Court by Mr. Haugh in support of motion; followed by Mr. Robert Bloomer in opposition.	
" "	Statements in rebuttal made by Mr. Haugh	
" "	ORDERED: Motion denied.	
" 18	Filed Pltf's opposing Memorandum.	23.
" 18	Filed Order denying Deft.'s Motion to set aside Judgment Order and Verdict.	
	Mailed copy to attorneys	24.
" 31	Filed Notice of Appeal. Copy mailed to Bloomer & Bloomer, Esqs., Ryan, Smith & Carbine, Esqs., Hon. James S. Holden, Herman I. Vesper, Court Reporter and A. Daniel Fusaro, Clerk, U. S. Court of Appeals	25.
" "	Filed Bond for Costs on Appeal	26.
" "	Filed Defendant's Order for Transcript.	27.
Feb. 14	" Motion of Deft.-Appellant to extend time for transmission of the record, and Memorandum of Law.	28.
" 15	Filed Order Extending Time for Filing and Docketing Record on Appeal.	
	Mailed copy to attorneys.	29.

Endorsed Filed October 5, 1972 at :00 A.M.  
LEONARD W. LAFAYETTE  
Deputy Clerk

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

DELPHINE E. PLOURDE,  
PLAINTIFF

CIVIL ACTION  
# 6738

vs

SHERBURNE CORPORATION,  
DEFENDANT

COMPLAINT

1. The Plaintiff resides at Hartford, Connecticut and is a citizen of the state of Connecticut. The Defendant is a Vermont corporation with its principal office at Sherburne, Vermont, and is a citizen of the State of Vermont. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000.00).

2. The Defendant was, on January 21st, 1972, and is now, engaged in the general business of operating a ski area, and as a part of such operation conducted ski classes and rented skis, boots and binding.

3. On, to wit, the 21st day of January 1972 the Plaintiff had been skiing in a ski class with an instructor provided by the defendant, and was skiing on skis and bindings provided by the defendant. The Plaintiff was a novice skier.

4. The instructor left the Plaintiff, as well as other members of the ski class, at a high elevation on the mountain to pick her own way down to the bottom of the run, telling the Plaintiff and other members of the class that he had another class forming and had to get to the bottom.

5. In the course of descending the mountain the Plaintiff came to a different part of the descent and fell. The ski bindings did not release. The Plaintiff injured her knee, and was taken down the rest of the way by ski patrol in a toboggan.

6. The Plaintiff was treated at the Rutland Hospital and was placed in a cast. She returned to Hartford, Connecticut in the cast, and then after the cast was removed and another cast put on her leg. She had the leg operated on in Hartford, Connecticut, continued to have pain and suffering in connection therewith, and is scheduled for further

surgery in the fall of 1972. She suffered pain and will suffer pain in the future. She has lost wages and will lose wages in the future. She has received a permanent injury. She has been put to great expense for medical and hospital services, and will have future expense.

7. The Plaintiff's injuries were the result of the careless and negligent acts of the defendant, its servants, agents and employees; and of the breach of contract and warranty by the defendant relative to the renting of skis and safety bindings and the abandonment of the Plaintiff by the instructor, an employee of the defendant.

8. Whereby and by reason whereof the Plaintiff demands judgment against the defendant in the amount of Seventy Thousand Dollars (\$70,000.00).

Dated at the City of Rutland, County of Rutland and State of Vermont this 2nd day of October, 1972.

Robert A. Bloomer  
A member of the firm of  
Bloomer and Bloomer, Esqs.  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

DELPHINE E. PLOURDE )  
v. ) C.A. No. 6738  
SHERBURNE CORPORATION )

**DEFENDANT'S ANSWER**

NOW COMES the Defendant, Sherburne Corporation, by its Attorneys, Ryan, Smith & Carbine, and for answer to Plaintiff's Complaint, alleges and says:

1. The Defendant denies that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00; it admits the remaining allegations of Paragraph 1 of the Complaint.

2. The Defendant admits the allegations contained in Paragraph 2 of the Complaint.

3. Defendant is without sufficient information and knowledge as to whether the plaintiff was a novice skier as alleged and therefore denies the same but admits the

remaining allegations of Paragraph 3 of the Complaint.

4. The Defendant denies the allegations of Paragraph 4 of the Complaint.

5. The Defendant denies the allegations of Paragraph 5 of the Complaint.

6. The Defendant is without sufficient information and knowledge as to the allegations of Paragraph 6 of the Complaint and therefore denies the same.

7. The Defendant denies the allegations of Paragraph 7 of the Complaint.

8. The Defendant denies the allegations of Paragraph 8 of the Complaint.

AFFIRMATIVE DEFENSES

Defendant is not at fault.

Plaintiff is barred from recovery by reason of her contributory negligence and assumption of risk.

WHEREFORE the Defendant demands judgment in its favor with its costs. Defendant demands jury trial.

Dated at the City of Rutland, County of Rutland and  
State of Vermont, this 26th day of October 1972.

SHERBURNE CORPORATION

By \_\_\_\_\_  
A Member of the firm of  
Ryan, Smith & Carbine  
Mead Building  
Rutland, Vermont

NOTICE OF APPEARANCE

Please take notice that we have been retained by  
and appear for the Defendant in the above entitled cause.

RYAN, SMITH & CARBINE

By \_\_\_\_\_  
A member of the firm

NOTICE UNDER RULE 5

TO: BLOOMER & BLOOMER, ESQS.

Pursuant to Rule 5 of the Rules of Civil Procedure for  
the District Courts of the United States, I hereby serve  
upon you as Attorneys for Plaintiff in the above entitled  
action, our Answer and Notice of Appearance for the  
Defendant in the above entitled action now pending before

the District Court of the United States for the District  
of Vermont.

By \_\_\_\_\_  
A member of the firm of  
Ryan, Smith & Carbine  
Mead Building  
Rutland, Vermont

CERTIFICATE OF SERVICE

I, Charles F. Ryan, Mead Building, Rutland, Vermont,  
a member of the firm of Ryan, Smith & Carbine, Attorneys  
for Defendant, hereby certify that I served a copy of the  
foregoing Answer and Notice of Appearance upon Bloomer &  
Bloomer, Esqs., 75 Merchants Row, Rutland, Vermont,  
Attorneys for Plaintiff, by mailing same postage prepaid to  
their office on October 26, 1972.

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UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

CIVIL ACTION FILE NO. 6738

DELPHINE E. PLOURDE        )  
                              )  
                              )  
                              VS.        )  
                              )  
                              )  
SHERBURNE CORPORATION      )

JUDGMENT

This action came on for trial before the Court and a jury, Honorable James S. Holden, Chief, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that Judgment is hereby entered on the verdict of the Jury for the Plaintiff to recover from the Defendant forty thousand dollars (\$40,000.00) damages.

Dated at Rutland, in the District of Vermont, this  
20th day of December, 1973.

EDWARD J. TRUDELL  
Clerk of Court

By: KEITH L. SYLVESTER  
Deputy Clerk

Endorsed: Filed December 20, 1973

KEITH L. SYLVESTER  
Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

DELPHINE E. PLOURDE )  
VS. ) CIVIL ACTION  
SHERBURNE CORPORATION ) DOCKET NO. 6738

MOTION TO SET ASIDE JUDGMENT ORDER AND VERDICT

NOW COMES the Defendant Sherburne Corporation, by its Attorneys, Ryan, Smith & Carbine, and respectfully moves that the Judgment Order and Verdict issued on the 20th day of December, 1973 be set aside and that Judgment be entered for the Defendant on the following grounds:

1. There is no evidence to support the verdict favorable to the Plaintiff.
2. The proximate cause of the accident was the failure on the part of the Plaintiff to ski within her ability.
3. Even if the instructor at the Defendant's place of business had abandoned the Plaintiff on the ski slope,

this fact standing alone is insufficient to support a verdict favorable to the Plaintiff.

4. The verdict resulted from sympathy.

5. There is absolutely no evidence of proximate cause between the injury suffered and the alleged evidence of negligence.

Dated at City of Rutland, in the County of Rutland and State of Vermont, this 28th day of December, 1973.

SHERBURNE CORPORATION

By \_\_\_\_\_

A Member of the firm of  
Ryan, Smith & Carbine  
Its Attorneys

CERTIFICATE OF SERVICE

I, James T. Haugh, a member of the firm of Ryan, Smith & Carbine, Mead Building, Rutland, Vermont hereby certify that I served a copy of the foregoing Motion to Set Aside Judgment Order and Verdict upon Robert A. Bloomer, Esquire, of the firm of Bloomer & Bloomer,

Attorneys for the Plaintiff, by mailing the same, postage  
prepaid, to his office on the 28th day of December, 1973.

---

James T. Haugh

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Delphine E. Plourde )  
vs. ) Civil Action  
Sherburne Corporation ) No. 6738

ORDER DENYING DEFENDANT'S MOTION TO  
SET ASIDE JUDGMENT ORDER AND VERDICT

After hearing in open Court on Defendant's Motion to Set Aside Judgment Order and Verdict, counsel for Plaintiff and Defendant present, it was

**ORDERED:** Motion denied.

Done in Court at Rutland, in the District of Vermont,  
this 18th day of January, 1974.

JAMES S. HOLDEN  
CHIEF JUDGE

Endorsed: Filed January 18, 1974  
EDWARD J. TRUDELL  
Clerk

1 DELPHINE E. PLOURDE, having been called as a witness by the  
2 Plaintiff, to testify in her own behalf,  
3 was duly sworn by the Clerk, and testi-  
4 fied on her oath, as follows:

5 DIRECT EXAMINATION BY MR. BLOOMER:

6 Q. For the record, would you state your full name for us,  
7 please?

8 A. Yes, Delphine Ellen Plourde.

9 Q. Speak up so I can hear you back here. State your name  
10 again, please?

11 A. Delphine Ellen Plourde.

12 Q. What is your age?

13 A. 24.

14 Q. And your residence?

15 A. East Hartford, Connecticut.

16 Q. What is your marital status?

17 A. Single.

18 Q. Have you ever been married?

19 A. No, I was not.

20 Q. Are you employed?

21 A. Yes, I am.

22 Q. What is your place of employment?

23 A. Connecticut Consumer Sales in Windsor, Connecticut.

24 Q. That is the name of your employer?

25 A. Yes.

26 Q. What is your present weekly wage?

1 A. \$135.00 a week.

2 Q. And how many hours a week do you work?

3 A. 35.

4 Q. Is that five days a week?

5 A. Yes.

6 Q. 7 hours a day?

7 A. Yes.

8 Q. I am going to take you back now, Miss PLOURDE, to November  
9 and December of 1971, were you employed during those  
10 months?

11 A. Yes, I was.

12 Q. Where?

13 A. By Adolph Bouchelle and Dr. Howard RUBIN in Hartford,  
14 Connecticut.

15 Q. What was your employment?

16 A. I was a Dental Assistant.

17 Q. A Dental Assistant?

18 A. Yes.

19 Q. What was your wage then?

20 A. I was making \$112.50 a week.

21 Q. Now, did there come a time between December 1971 and  
22 February of 1972, when you were unemployed?

23 A. Yes.

24 Q. Would you tell us when that was, please?

1           A. I would say in mid-December, Dr. Bouchelle had told us  
2           that five of the girls would be unemployed due to  
3           financial reasons.

4           Q. And were you one of those who was unemployed?

5           A. Yes.

6           Q. Did you seek other employment?

7           A. Yes.

8           Q. Did you have other employment lined up?

9           A. Yes, I did.

10          Q. With whom?

11          A. With Richard Rita Personnel, Hartford, Connecticut.

12          Q. And did you eventually go to work for them?

13          A. Yes, I did.

14          Q. When did you go to work for them?

15          A. On or about February 7th.

16          Q. That would be 1972?

17          A. Yes.

18          Q. When were you supposed to have gone to work for them?

19          A. February first.

20          Q. 1972?

21          A. Yes.

22          Q. Now, on December, well, say in the year of 1971, what  
23           was your general health?

24          A. Excellent.

Q. Did you engage in any athletic activities?

1 A. Yes.

2 Q. What did you engage in?

3 A. I enjoyed swimming, bike riding, hiking, I enjoyed  
4 camping.

5 Q. Did you play tennis?

6 A. Yes.

7 Q. Did you take tennis lessons, for example?

8 A. Yes.

9 Q. How about water skiing, did you do any water skiing?

10 A. Yes, swimming.

11 Q. And bowling?

12 A. Yes.

13 Q. Did you bowl?

14 A. Yes.

15 Q. Did you do any horseback riding?

16 A. Very little.

17 Q. All right and had you ever done any snow skiing up until  
18 the end of 1971?

19 A. No, I had not.

20 Q. Did there come a time in either December of 1971 or  
21 January of 1972, when you decided that you would go  
22 skiing somewhere?

23 A. Yes.

24 Q. Where did you decide to go?

1 A. I decided to go to Killington, Vermont.

2 Q. Did you belong to some kind of a club down in Hartford,

3 at that time?

4 A. Yes.

5 Q. What was the name of the Club?

6 A. Corsair.

7 Q. Corsair?

8 A. Corsair.

9 Q. What type of club was that?

10 A. That was a club for people who were over 21 for dances

11 and social and civic events and volunteer work.

12 Q. And in connection with the Corsair Club did they have some

13 relationship to Killington, Vermont?

14 A. Yes, they had a lodge in Killington where you could

15 lodge and stay.

16 Q. And, do you recall where that was located?

17 A. (No response)

18 Q. The name of the road, if you know?

19 A. No, I don't.

20 Q. You don't remember?

21 A. No.

22 Q. Did CORSAIR have any other places that they rented other

23 than at Killington?

24 A. Yes, they had one in Newport, Rhode Island, on the

1 beach.

2 Q. That would be for use in the summer time as distinguished  
3 from the winter?

4 A. Yes.

5 Q. How long did you belong to the CORSAIR Club in December of  
6 1971?

7 A. Almost a year.

8 Q. Did you make any contact with the Killington ski area, -  
9 do you understand that the Killington ski area was  
10 formerly known as the Sherburne Corporation?

11 A. (No response).

12 Q. If you don't know, just say you don't know.

13 A. I don't know.

14 Q. All right. In any event you did make contact with the  
15 Killington ski area, did you not?

16 A. Yes, I did.

17 Q. How did you do that?

18 A. I wrote for a brochure and I phoned to find out about  
19 looking into skiing lessons.

20 Q. Did they send you a brochure?

21 A. Yes, they did.

22 Q. And is there a particular method of teaching skiing, which  
23 was set forth in the brochure?

24 A. Yes.

1 Q. What was that?

2 A. The graduated length method.

3 Q. Just briefly, would you tell us your understanding of the  
4 graduated length method?

5 A. My understanding is that you start out on short skis and  
6 you progress to -

7 Q. Graduated to successively longer skis as your progress  
8 increased?

9 A. Yes.

10 Q. Did you eventually make arrangements with Killington to  
11 come up here?

12 A. Yes, I did.

13 Q. What arrangements did you make?

14 A. I had signed out for a week of ski lessons at  
15 Killington.

16 Q. This was a so-called package deal?

17 A. For beginners.

18 Q. All right, what was the, included in the arrangement  
19 that you made with Killington?

20 A. They sponsored certain activities after your ski  
21 lessons, such as a "fondue" (phonetic) party one  
22 night, there was a film and there were certain activi-  
23 ties that they sponsored in the afternoon and in the  
24 evening.

1 Q. This was all explained to you on the telephone or in a  
2 brochure before you signed up?

3 A. Yes.

4 Q. Now, did there come a time when you left Hartford and came  
5 to Killington?

6 A. Yes.

7 Q. When was that?

8 A. That would be November 16th.

9 Q. What day of the week?

10 A. That was on a Sunday.

11 Q. Had you ever been to Killington before?

12 A. No, I had not.

13 Q. With whom did you come?

14 A. I came with Mr. Rob Heinrich.

15 Q. Was he a member of CORSAIR?

16 A. No, he was not.

17 Q. Was he from down in Hartford area?

18 A. Yes.

19 Q. When you came up to Killington with Mr. Heinrich, who  
20 drove?

21 A. Mr. Heinrich drove.

22 Q. Was it his automobile?

23 A. Yes, it was January, not November.

24 Q. I'm sorry.

1 A. Wednesday.

2 Q. When you came up with him in January, he drove?

3 A. Yes.

4 Q. In his car?

5 A. Yes.

6 Q. When you first came up on Sunday, January 16, where did you  
7 go?

8 A. We went straight to the CORSAIR Lodge.

9 Q. Had he ever been there before, to your knowledge?

10 A. Not to my knowledge.

11 Q. And you never had, either?

12 A. No.

13 Q. Did you have any difficulty finding it?

14 A. Yes.

15 Q. What time did you finally get there?

16 A. I think it was after 8:30 or 9:00.

17 Q. Was there anyone else there?

18 A. Yes.

19 Q. Who was there?

20 A. An employee of Killington Corporation.

21 Q. That worked for Killington?

22 A. Yes.

23 Q. Do you remember what his or her name was?

24 A. Her first name was Candy.

1 Q. Candy?

2 A. Yes.

3 Q. Do you remember the last name right now?

4 A. No.

5 Q. What was her employment with Killington, if you know?

6 A. I don't know, it varied, sometimes she gave out tickets  
7 other times it was working in the cafeteria, I think.

8 Q. Were there any other persons at the Lodge when you arrived?

9 A. No, yes, she had a friend there.

10 Q. Do you know who that was?

11 A. No.

12 Q. Now, when you say a "Lodge," would you describe the build-  
13 ing to us a little bit so we will know whether it  
14 was a big hotel, a chalet, or what it was?

15 A. It was not a chalet or a hotel, like a small ski  
16 lodge and there was a living room in the center, a  
17 big kitchen off to the side, entered into the kitchen  
18 and the dorm was on a dorm style where the men slept  
19 downstairs and the girls on the top floor.

20 Q. And is that the arrangement that you followed when you were  
21 there?

22 A. That was the only arrangement.

23 Q. Now, when was it that you first went to the Killington  
24 ski area itself?

1 A. Monday morning, the 17th.

2 Q. Approximately what time of day did you go there?

3 A. Early in the morning.

4 Q. You don't remember exactly the time?

5 A. No.

6 Q. Did you have your breakfast before you went there?

7 A. Yes, I did.

8 Q. Where did you eat?

9 A. At the CORSAIR.

10 Q. What were the arrangements for eating?

11 A. Full kitchen with the freezer, stove and range but  
12 you had to bring your own food and cook it yourself.

13 Q. That was the way the CORSAIR Lodge was run?

14 A. Yes, you just paid so much per night to stay there  
15 - a minimal fee.

16 Q. Now, when you first went up to Killington, would you tell  
17 us what you did when you got there, please?

18 A. Yes, my, when I first got there, I finally thawed out  
19 and I had to go in line to sign out for the skiing in-  
20 structions and I got my tags for the ski lift and we  
21 got a brochure on, and an itinerary for the week, what  
22 time the meetings were and what time our classes  
23 were and a little bit of information about Killington  
24 and so forth.

1 Q. When you arrived, did you have your ski clothing with you?

2 A. Yes, I did.

3 Q. Did you have any boots?

4 A. No, I did not.

5 Q. Had you ever had any boots on before, ski boots?

6 A. No.

7 Q. Did you have your own skis?

8 A. No, I did not.

9 Q. Had you ever had skis on before, snow skis?

10 A. No, I had not.

11 Q. Did you have any poles?

12 A. No, I did not.

13 Q. Were the ski poles and boots a part of the package arrange-  
14 ment that you had with Killington?

15 A. Yes, it was.

16 Q. Were you eventually fitted to boots?

17 A. Yes.

18 Q. Tell us about that, please?

19 A. We went into one part of the building on the ground  
20 floor and you were in line and you waited your turn  
21 until someone who was on the bottom level was able to  
22 fit you to your bindings and your skis and then they  
23 asked you what size shoe you took and they had to do  
24 your boots.

1 Q. All right, had you, at that time, had you already paid  
2 for your ski week?

3 A. Yes.

4 Q. So, after you got your boots and they were issued to you,  
5 what did you do then?

6 A. (No response)

7 Q. Did you get some skis?

8 A. Yes.

9 Q. Tell us about that, please?

10 A. They were the short skis and we had to step into them  
11 and he asked us our weight and what size shoe we took  
12 and we had our boots and then he touched certain parts  
13 of the binding and set the bindings for us.

14 Q. And did you have anything to do with setting the bindings?

15 A. No, I did not.

16 Q. These were all done by the people there at Killington?

17 A. Yes.

18 Q. Were you issued any poles that day?

19 A. Not that day.

20 Q. We are talking about, now, about the first day which was  
21 Monday the 17th?

22 A. Yes.

23 Q. All right, after you received your skis, boots and bind-  
24 ings, what happened then?

1 A. We went to the base of the snow shed for our lessons.

2 Q. Were you assigned an instructor?

3 A. Yes.

4 Q. Were there many people there when you were given your

5 boots and your skis?

6 A. Yes.

7 Q. Do you have an estimate as to how many there might be?

8 I don't mean exactly, whether 20 or 50 or a hundred

9 or what there may have been?

10 A. Over a hundred, over 200, I assume.

11 Q. When were you assigned your instructor?

12 A. That day.

13 Q. Well, I know, but before you got your boots or after you

14 got them, before you went out to the foot of the

15 slope to get your instruction?

16 A. Oh, right, we were assigned an instructor before we

17 met.

18 Q. Before you met at the foot of the slope?

19 A. Yes.

20 Q. Do you know his name?

21 A. His first name was Bob.

22 Q. Did you know his last name?

23 A. No, I did not.

24 Q. Did you ever know him?

1 A. No.

2 Q. He was just "Bob"?

3 A. Yes.

4 Q. All right, then you went out to the foot of the slope, I  
5 think you said, is that correct?

6 A. (No response)

7 Q. With the instructor?

8 A. Yes.

9 Q. Would that be the Snow Shed area?

10 A. Yes, it would be.

11 Q. Tell us what happened there, just in general.

12 A. He asked us if we had skied before and if we had been  
13 to Killington before and he explained to us what the  
14 graduated length method was and what his purpose was  
15 to teach us the graduated length method and asked us  
16 our names.

17 Q. Then, did you have your first lesson that day on the  
18 short skis?

19 A. Yes.

20 Q. How many days did you have lessons on the, perhaps you  
21 should strike that. How long were the short skis, if  
22 you could tell us, approximately?

23 A. They weren't, I think they were about 3 feet, 4 feet,  
24 they weren't 5, they were short skis.

1 Q. All right, how many days did you use those?

2 A. 3 days.

3 Q. That would be Monday, Tuesday, Wednesday?

4 A. Yes.

5 Q. Where did you have your lessons, Monday, Tuesday and

6 Wednesday? What slopes?

7 A. It was the main slope, I don't -

8 Q. Well, the main slope, or SNOW SHED?

9 A. Yes, SNOW SHED.

10 Q. Do you understand that is a different area, there are

11 several different areas in Killington?

12 A. Yes.

13 Q. SNOW SHED was the one you were on the first three days?

14 A. Yes.

15 Q. Did you go anywhere else the three, first three days?

16 A. No.

17 Q. Did you ski first 3 days at any time other than with

18 your instructor, practice alone?

19 A. After my lesson?

20 Q. Yes.

21 A. Just on the SNOW SHED.

22 Q. Did you learn to ride up the chair, for example, that is

23 something you have to learn, is it not?

24 A. Yes.

Q

1 Q. How to get on and off?

2 A. Yes.

3 Q. At that particular chair lift, do they keep the chair  
4 running at all times and you get on while the chair  
5 is running and you get off while it is moving?

6 A. Yes.

7 Q. You had to learn to do that on the short skis?

8 A. Yes.

9 Q. Did you have any poles at all in the first three days of  
10 your lessons?

11 A. No, I did not.

12 Q. And then the following day then would be Thursday, did  
13 something happen then, which was unusual, in that you  
14 changed skis, did you change skis?

15 A. Yes.

16 Q. Did you get some different skis?

17 A. Yes, I got the larger skis.

18 Q. They were what length, if you remember?

19 A. I think it was 5 feet, I think.

20 Q. They were longer than the ones that you had, previously?

21 A. Yes, much longer.

22 Q. Tell us about - let me back up. Did you change shoes at  
23 any time?

24 A. Yes, I did.

1 Q. When did you change shoes?

2 A. Beginning of the week.

3 Q. Beginning of the week?

4 A. Yes.

5 Q. Was there some reason for that?

6 A. Yes.

7 Q. What was it?

8 A. I think they were too big.

9 Q. When you changed the shoes this was before you got the

10 long skis?

11 A. Yes.

12 Q. And so that you had changed your shoes when you were

13 assigned the long skis, is that correct?

14 A. Yes.

15 Q. Did you ever change your shoes after you got the long skis?

16 A. No, I didn't.

17 Q. Tell us what happened when you got the long skis, - were

18 your shoes fitted to the skis?

19 A. Yes.

20 Q. Tell us about that, please, how that took place?

21 A. We got the larger skis and the bindings were set again

22 for the larger skis.

23 Q. Were you in the boots at the time that they were set, or

24 were the boots placed in the skis?

1 A. The boots were placed in the skis.

2 Q. You were then issued the new skis?

3 A. Yes.

4 Q. Fitted to your boots?

5 A. Yes.

6 Q. That was the fittings was done by someone at Killington?

7 A. Yes.

8 Q. Do you have anything at all to do with the fitting?

9 A. No, I did not.

10 Q. Did you make any adjustment to the skis, the bindings or  
11 the boots, after they were fitted by a man there?

12 A. No, I did not.

13 Q. Now, during the course of skiing the first 3 days on the  
14 shorty skis, did you fall, at all?

15 A. Yes.

16 Q. Did the other members of your class fall?

17 A. Yes.

18 Q. When you fell, were there occasions when the bindings  
19 released?

20 A. Yes.

21 Q. How were the skis held on to your leg so that they wouldn't  
22 go down the mountain?

23 A. There was a strap that had a little buckle wrapped it  
24 around your ankle.

1 Q. So the ski won't slide down the mountain, should the bind-  
2 ing release. Is that what happened, the binding  
3 released and the ski would be attached to your ankle  
4 but loose?

5 A. Yes.

6 Q. Now, after you got your 5 foot skis, did you have a lesson  
7 on Thursday?

8 A. Yes, I did.

9 Q. Did you have any poles that day?

10 A. No, I did not.

11 Q. Where did you have your lesson?

12 A. My lesson was on the SNOW SHED.

13 Q. Any other place?

14 A. No, it was not.

15 Q. So that up until then, the only place that you skied, was  
16 SNOW SHED?

17 A. Yes.

18 Q. During the course of your lesson on Thursday, did you fall,  
19 as you recall it?

20 A. Yes, prior, or during my lesson?

21 Q. Either. I asked you whether, during the course of your  
22 lesson, you fell?

23 A. Yes, I did.

24 Q. And, did your ski release on that occasion?

1 A. On Thursday?

2 Q. Yes.

3 A. No, it did not.

4 Q. Now, Friday, - Friday morning, - did you practice skiing  
5 some place?

6 A. Yes, I did.

7 Q. I think I am a little ahead. I'd like to go back now to  
8 Thursday afternoon, did something happen Thursday,  
9 were you issued new equipment or was that Friday?

10 A. Friday before our lesson, we were given poles.

11 Q. Oh, so that Friday morning, did you practice some place?

12 A. Yes, I did.

13 Q. Where was that?

14 A. I don't know exactly, at the end of the trail.

15 Q. Would you tell us how you got to it?

16 A. Yes, we drove to where the Gondolas are, at the base.

17 Q. That would be a different area from which you have -

18 A. Yes.

19 Q. All right.

20 A. Then we met other members of our class.

21 Q. That was pre-arranged?

22 A. Yes.

23 Q. All right.

24 A. We took the gondolas half way up in the morning and

1 then we skied back down.

2 Q. You don't know the names of any of the trails that you  
3 came down?

4 A. No, I don't.

5 Q. Were they difficult trails that you came down?

6 A. Some times it was.

7 Q. All right and other times it wasn't, I take it?

8 A. Yes.

9 Q. Did you have any particular problem coming down on that  
10 day?

11 A. (No response)

12 Q. This was - this is the morning, in the morning now, after  
13 you took the gondola.

14 A. (No response)

15 Q. Do you understand the question?

16 A. Yes, sometimes I had a problem.

17 Q. What problem did you have?

18 A. Well the, - every time I fell, I, - they just wouldn't  
19 release at all.

20 Q. All right now, did you have any poles, at that time?

21 A. No, I did not.

22 Q. And you skied down back down to the bottom, eventually, I  
23 take it?

24 A. Yes.

1 Q. And you did fall, I think you said?

2 A. Yes.

3 Q. After you got to the bottom, what did you do?

4 A. WE got in our cars and went back to Killington to go  
5 to the SHED and be issued our poles and the intermed-  
6 iate lesson.

7 Q. What time was your lesson?

8 A. Noon lesson.

9 Q. Always a noon lesson?

10 A. It was always around that time.

11 Q. Was it always the same instructor?

12 A. Yes, it was.

13 Q. So you were issued your poles on Friday, just before your  
14 lesson?

15 A. Yes.

16 Q. Were you instructed as to how the poles should be held?

17 A. Yes, we were.

18 Q. And Bob gave you that instruction?

19 A. Yes, he did.

20 Q. Where was that done?

21 A. That was done at the base of the SNOW SHED, very be-  
22 ginning of it where we met for our lesson at the GRAY  
23 BASE.

24 Q. Where did you go skiing that day with your instructor,

1 during the course of the lesson?

2 A. I don't know, I don't know the trail.

3 Q. How did you get to it?

4 A. (no response)

3 Q. Did you take a lift?

6 A. Yes, we did.

7 Q. What was the lift you took?

A. We took the lift to the top 'of SNOW SHED.

9 Q. Then, what did you do?

10 A. Then we took one of the trails.

11 Q. Yes.

A. Around the SNOW SHED, but not SNOW SHED.

13 Q. You didn't come down the SNOW SHED slope?

14 A. No.

15 Q. Had you ever been on this trail you said you just took?

16 A. NO.

17. Q. Where did that end up?

## 18 A. Goes to the gondola

10 Q. Then did you get into the sandals?

39 A. Yes, that was part of our lesser

21. Do you ride up?

as A Yes

23 Q. Had you ever been there before, where the gondola took  
24 you that time?

1 A. No.

2 Q. Do you understand that there are two stops for the gondola?

3 A. Uh huh.

4 Q. You said you went half way in the morning?

5 A. Yes.

6 Q. Is that where you picked up in the afternoon and went on  
7 up to the top?

8 A. Yes.

9 Q. All right, you had never been there before?

10 A. No.

11 Q. Describe, if you will please, your descent from the top  
12 with your instructor.

13 A. It was very rough.

14 Q. Well, that isn't, all right, strike that. How did you  
15 come down, would the instructor follow you?

16 A. He, the instructor would lead the way so many feet and  
17 stop.

18 Q. How many feet?

19 A. Perhaps, 20, 25 or 30 feet and then he would stop  
20 and he would call your name and you individually  
21 would ski to him.

22 Q. How many of you in the class that day?

23 A. (No response)

24 Q. As you remember?

1 Q. As you remember.

2 A. I think there were eight.

3 Q. And is that the way you proceeded all the way down the  
4 mountain?

5 A. Yes.

6 Q. What were the conditions up there, - ski conditions?

7 A. (No response)

8 Q. If you know.

9 A. Yes, they were just very rough and it was very hard  
10 getting down.

11 Q. Was this anything that you were accustomed to, this kind  
12 of skiing?

13 A. No.

14 Q. Did the instructor give you any instructions up there, re-  
15 lative to the use of your poles?

16 A. Yes, he did.

17 Q. What did he say?

18 A. He told us that we were to always keep them on our side  
19 and not puncture the chest or our lungs and watch out  
20 for other skiers and don't block them and to keep the  
21 band on the inside the wrist.

22 Q. Did you find skiing with poles was different from skiing  
23 without poles?

24 A. Yes, it was more awkward.

1 Q. How long did it take you to go up the lift to  
2 the top of the SNOW SHED?

3 A. A long time.

4 Q. You don't have any idea?

5 A. I didn't have a watch.

6 Q. But you did get down to the top of the SNOW SHED area,  
7 eventually?

8 A. Yes, eventually.

9 Q. As you got down to the SNOW SHED area, what was your  
10 general physical condition?

11 A. I was tired.

12 Q. Had you fallen on the way down?

13 A. Several times.

14 Q. Had your skis released at any time?

15 A. No, they had not.

16 Q. Had you said anything to the instructor about your skis  
17 releasing or not releasing?

18 A. No.

19 Q. Had he said anything to you about it?

20 A. No.

21 Q. Had any other students' skis released?

22 A. Yes.

23 Q. Now, as you got to the general area of the top of the SNOW  
24 SHED did the instructor say something to you and the

1 other members of the class?

2 A. Yes, he told -

3 Q. Just, yes, if that is the answer. Did he say something  
4 to you?

5 A. Yes, he did.

Q. What did he say?

7 A. He said that he was late for his next class, that they  
8 were forming at the base, and that we looked like a  
9 bunch of drowned rats and he was sorry that he had  
10 taken us down the slope. We weren't ready and for us  
11 to get down the slope any way we could and that he  
12 would see us the next day at the same time at the  
13 bottom of SNOW SHED and for us to practice as much as  
14 we could in the afternoon.

15 Q. Now, after that then he left and went down?

16 A. Yes, he skied down.

17 MR. O'ROURKE: Your Honor, there is one  
18 word I didn't get there.

19 (LAST ANSWER READ ALOUD BY THE REPORTER).  
it

20 Q. Was/the first time that the instructor had left you, up on  
21 the slope alone?

22 A. During the lesson, yes.

23 Q. Yes, now, after he left, tell us what happened.

24 A. Less than a minute after he left, we always skied down

1 the mountain individually, not as a group, and I was  
2 going down the mountain and my skis started to pick  
3 up speed and I tried to maneuver myself but I just  
4 didn't know what to do with the poles or how to get  
5 out of the speed that I was picking up and I was turning  
6 left going down the SNOW SHED and I fell -

7 Q. All right, when you fell, what happened?

8 A. I heard something tear and I thought that I had torn  
9 my ski parka and I hadn't, and I laid in the snow and  
10 I turned to an instructor that was possibly 20 to 25  
11 feet from me and I asked him -

12 Q. That wasn't your instructor?

13 A. No, it was not.

14 Q. Why didn't you get up?

15 A. I couldn't.

16 Q. Why not?

17 A. I had excruciating pain in my leg.

18 Q. All right, then what, was it your thigh?

19 A. No, it was around my knee.

20 Q. All right.

21 A. My right knee.

22 Q. All right, so that you turned to the instructor who was -  
23 how could you tell he was an instructor?

24 A. Because he had on a red jacket and it said KILLINGTON

1 we would just as soon withdraw because it is taken care of I  
2 think in the Dr. RADDING Deposition, so we will withdraw  
3 those bills.

4 MR. O'ROURKE: Until such time of the deposi-  
5 tion.

6 THE COURT: On the present state of the record  
7 they would be, the Court won't rule on them in view of the  
8 offer that has been made and that your request, that way the  
9 medical testimony will be there to substantiate it.

10 MR. BLOOMER: Thank you, Your Honor.

11 MR. O'ROURKE: To save time, Your Honor,  
12 during the noon recess I could look these over and then put  
13 in the ones we don't object to.

14 MR. BLOOMER: We have no further questions  
15 at this time, Your Honor.

16 THE COURT: Very well.

17 CROSS EXAMINATION BY MR. O'ROURKE:

18 Q. Miss Plourde, had you ever done any skiing before you  
19 came up to Killington for the ski week?

20 A. No, I had not.

21 Q. And your first day of the ski week was on Monday, was it?

22 A. Yes, it was.

23 Q. Do you remember what time you got up there to Killington?

24 A. Monday?

1 Q. Yes.

2 A. Early in the morning.  
do

3 Q. And /you remember what time you first went out on the hill  
4 for your lesson?

5 A. It was in the morning.

6 Q. Was it around noon time?

7 A. Yes.

8 Q. Prior to going out on the hill, did you go and look at a  
9 movie?

10 A. Yes, we did, we have a movie.

11 Q. That movie was concerning what you were going to learn  
12 during the ski week?

13 A. It was about skiing.

14 Q. It was about skis, bindings, poles, riding the lifts?

15 A. I don't remember.

16 Q. But you did see that movie?

17 A. Yes, I did.

18 Q. And then you say that you were issued some skis and on  
19 your skis and Mr. Heinrich's skis?

20 A. Yes.

21 Q. You took a little piece of tape and put your initials on  
22 yours and he did the same for his?

23 A. Yes.

24 Q. All right, it would be on the right ski?

1 A. Yes.

2 Q. And then you used those skis Monday, Tuesday and Wednesday  
3 and on Thursday you got a different set of skis that  
4 were a little longer?

5 A. Yes.

6 Q. Did you take that piece of tape off the short skis and put  
7 it on the longer skis?

8 A. No, I left the tape on the short skis.

9 Q. And so did you then put another new piece of tape on the  
10 longer skis?

11 A. Yes, on the longer, yes.

12 Q. Mr. Heinrich have the same type of ski that you had?

13 A. I don't know.

14 Q. Were you able to make some observations as to the color  
15 of his skis?

16 A. No.

17 Q. What was the color of the ski that you had on Thursday?

18 A. I don't remember.

19 Q. And, were you able to make some observations as to the  
20 bindings that Mr. Heinrich had on his skis?

21 A. No.

22 Q. Or, the bindings that you had on your skis?

23 A. No.

24 Q. Now, do you have any judgment as to the weight of the,

1                   Mr. Heinrich, as of that Thursday, the ski week, how  
2                   much he weighed?

3                   A. Over 150.

4                   Q. What was your weight on that day?

5                   A. About 110 or 115.

6                   Q. When they fit you to those skis on that Thursday morning,  
7                   did you have your boots on when you were fitted to the  
8                   skis?

9                   A. Yes.

10                  Q. What you, did you just step into the cage and they put  
11                  the bindings down and adjusted them accordingly,  
12                  didn't they?

13                  A. They were with them, yes.

14                  Q. And you, I am sure, will agree with me that when a skier  
15                  comes down the face of the ~~mountain~~ mountain the skier is the  
16                  only one that has the control of the skis?

17                  A. Not during the lesson, really.

18                  Q. Well, let's say that after the lesson if the skier is  
19                  coming down the hill the skier is the only one that  
20                  has control of those skis?

21                  A. There is no one there to tell you differently.

22                  Q. Sherburne wouldn't have any control of those skis,  
23                  Killington wouldn't have, would they?

24                  A. They would have control in a sense to what they were

1 set for.

2 Q. What really happened here, Miss Plourde, isn't it that you  
3 just went out of control and fell down?

4 A. I was going down the hill and turning left.

Q. Didn't you testify that your skis started going fast and —

6 A. I was picking up speed, yes.

7 Q. Were you in control of the skis?

8 A. I was trying to gain control.

9 Q. Did you feel that you had control over them before you  
10 fell?

11 A. To the best of my ability, I tried to control it.

12 Q. What caused you to fall, Miss Plourde?

13           A. Well, I was riding about my poles, I didn't know  
14           what to do with them and I didn't know how to stop  
15           picking up speed.

16 Q. Now that Friday morning before you went to Killington for  
17 your lesson you went over to the Gondola with Mr.

18 Heinrich, did you?

19 A. Yes.

20 Q. Yourself and Mr. Heinrich rode up the gondola to get to  
21 the uppermost - to get with the other members of your  
22 class?

22 A. (No response).

24 Q. Your instructor Bob, wasn't there at that time, was he?

1 A. In the morning, no.

2 Q. This was something that you felt that you could handle  
3 by yourself?

4 A. Yes.

5 Q. And then you went back over to Killington after you made  
6 this run on the Gondola? - In order to go over for  
7 your lesson?

8 A. That's right, to get our poles and have our lesson,  
9 yes.

10 Q. What time did your lesson start that week?

11 A. That week?

12 Q. Yes.

13 A. Close to noon.

14 Q. They all started then at noon, didn't they?

15 A. Yes.

16 Q. You went up with the group and Mr. Heinrich was included  
17 in the group?

18 A. Yes.

19 Q. Then the lesson always took a certain amount of time,  
20 didn't it?

21 A. Yes.

22 Q. How much time was it that the lesson took?

23 A. I think it was two hours.

24 Q. Wasn't it that you were to be back down to-the bottom of

the hill at a quarter of 2:00 in the afternoon?

2 A. I don't know exactly what time.

3 Q. Well, it was either, would you say it was either an hour  
4 or 45 minutes, or 2 hours, the lesson took?

5 A. I dont know exactly.

6 Q. What would be your best judgment?

7 A. It was, it started, then we go back to where we  
8 started, that was a full lesson.

9 Q. How much was it, in time?

10 A. I don't know.

11 Q. What would be your best judgment, Miss Plourde?

12 A. I didn't have a watch.

13 Q. Well, you were there, Miss Plourde, do you have any  
14 judgment as to how long the lesson would take?

15 A. It was, the length of time that it took us to get to  
16 the bottom of Snow Shed down to the bottom of Snow Shed.

17 Q. You just told us a few minutes ago you thought it was  
18 2:00 o'clock you would get through the lesson, would  
19 you stand on that?

20 A. Well, I thought it would be the length of time for us  
21 to get back where we started, I don't know how long  
22 it -

23 Q. That would be a very key thing, wouldn't it, in connection  
24 with when you fell, when the lesson was over?

1 A. Pardon?

2 Q. That would be a very key thing to determine when the les-  
3 son was over, in relation to the time that you fell in  
4 the day time?

5 A. Yes, it would be important.

6 Q. What would you say then what would be your judgment as to  
7 how long the lesson took ?

8 A. I don't have any idea.

9 Q. All right, let's ask another thing, you say you fell on  
10 the hill, how long were you there on the hill before  
11 the ski patrol came to pick you up?

12 A. At least ten minutes.

13 Q. How long did it take the ski patrol to get you down to  
14 the ski patrol medical room?

15 A. I don't know.

16 Q. What would be your best judgment?

17 A. At that point, I didn't have any judgment.

18 Q. You would have no judgment at all?

19 A. I was in pain, I wanted to get down the mountain.

20 Q. Now, if the Killington records show, if their business  
21 records show it was 5 minutes of 3:00 in the after-  
22 noon, when you arrived at the medical unit down there,  
23 what would you say in relation to that time, in re-  
24 lation to the time that you fell, how long was it from

1 the time that you fell, until they got you down?

2 A. It was a length of time I don't know.

3 Q. It would be important factor to know whether you were in  
4 your lesson or out skiing on your own?

5           A. It would be important.

6 Q. And because one of your claims here is that the ski  
7 instructor left you on the slopes?

8 A. Yes.

9 Q. All right, he made the comment that the whole class looked  
10 like a bunch of drowned rats, was it?

11 A. Yes.

12 Q. Now, Miss Plourde, after you got to the bottom of the

13 hill, how long a time elapsed from the time that ALDO  
14 Ambulance took you there from the Sherburne area,  
15 until you arrived at the Butland Hospital?

16 A. It was a length of time.

17 Q. Do you have any judgment on that?

18 As No. I don't

19 Q. You say that you fell on Thursday before your lesson on  
20 one occasion and the bindings did not release?

21 A. Yes, several times.

22 Q. How many times did you fall on Thursday before your lesson  
23 and the bindings didn't release?

24 A. I don't know, exactly.

1 Q. Did you ever see or say anything to your instructor about  
2 the bindings not releasing?

3 A. No.

4 Q. And, can you describe to the Jury the types of falls that  
5 you had when the bindings didn't release?

6 A. (No response)

7 Q. Were they forward falls, side falls, or-  
8 A. Whichever way I fell, they didn't release.

9 Q. Do you remember what, where you did fall?

10 A. No.

11 Q. Now, during the lesson did you have any falls, Miss  
12 Plourde?

13 A. Yes, I did.

14 Q. Did the bindings release during those falls?

15 A. No.

16 Q. You continued to use those skis?

17 A. Yes.

18 Q. Did you make any comments to your instructor about the  
19 fact that the bindings didn't release?

20 A. No.

21 Q. After the lesson was over, I assume you continued to ski  
22 for a certain length of time?

23 A. What day?

24 Q. That would be on Thursday.

1 A. Yes, I did.

2 Q. For how long a period of time after the lesson was over  
3 did you continue to ski?

4 A. Well, maybe a half hour or so, an hour.

5 Q. Did the bindings - did you fall on any occasion during  
6 that half hour or hour period of time?

7 A. Yes.

8 Q. And did the bindings release during this period of time?

9 A. No, they didn't.

10 Q. Now, on Friday morning when you and Mr. Heinrich went up  
11 to the Gondola, did you fall on any occasions on that  
12 run?

13 A. Yes, I did.

14 Q. And how many times did you go up that Gondola with Mr.  
15 Heinrich before your lesson?

16 A. How many times did we go up before my lesson?

17 Q. Yes.

18 A. Once, part "time".

19 Q. The ticket Killington issued you for this ski week in-  
20 cluded your right to use the ski tows without paying  
21 any extra cost?

22 A. Yes.

23 Q. On the way down, how many times would you say that you  
24 fell on that run?

1 A. Which run?

2 Q. On the run on the Gondola when you went up with Mr.  
3 Heinrich to the Gondola?

4 A. I fell, I don't know exactly how many times.

5 Q. Do you recall the types of falls that you had that morning?

6 A. They varied.

7 Q. When -

8 A. I don't know what types.

9 Q. When you got to Killington and you met your ski instructor,  
10 did you make any complaints to him that the bindings  
11 didn't release?

12 A. No.

13 Q. When you saw this movie there, before you started actually  
14 in the process of skiing, did they make any reference  
15 in that movie to bindings, what they should do and  
16 what they shouldn't do?

17 A. I don't remember.

18 Q. I guess that is all I have, thank you.

19 REDIRECT EXAMINATION BY MR. BLOOMER:

20 Q. During any of the falls that you had on Thursday Morning  
21 or Thursday, up until you got to the time coming down  
22 Snow Shed, did you injure yourself?

23 A. Before Friday?

24 Q. No.

1 A. I'm sorry.

2 Q. Strike the question please, - this is on Friday, you  
3 went up on the gondola, right?

4 A. Yes.

5 Q. With Mr. Heinrich and some other members of your class?

6 A. Yes.

7 Q. You testified you fell coming down?

8 A. Yes.

9 Q. Did you get hurt?

10 A. No.

11 Q. Then you went up to the very top of the mountain as I  
12 understood it with your instructor?

13 A. Yes.

14 Q. And you came down to the general top of the Snow Shed  
15 area?

16 A. Yes.

17 Q. And you fell several times?

18 A. Yes.

19 Q. Down to there?

20 A. Yes.

21 Q. Did you get hurt?

22 A. No.

23 Q. The only time you got hurt is the time that you complained  
24 about here?

1 A. Yes.

2 Q. Thank you.

3 MR. O'ROURKE: Nothing further, Your Honor.

4 MR. BLOOMER: You may step down.

5 (WITNESS EXCUSED AND WITHDREW)

6 L-E-O A. D-E-N-I-S, having been called as a witness  
7 was duly sworn by the Clerk, and testified on  
his oath as follows:

8 DIRECT EXAMINATION BY MR. BLOOMER:

9 Q. For the record, would you state your name again for us,  
10 please?

11 A. Leo A. Denis.

12 Q. What is your address?

13 A. Wadley Lane, Killington, Vermont.

14 Q. Wadley Lane?

15 A. Wobbly Lane.

16 Q. Wobbly Lane?

17 A. that's correct.

18 Q. Wobbly Lane, that is up in the basin?

19 A. That is correct.

20 Q. What is your job capacity?

21 A. At Killington I am the Manager of skiing, I am  
22 responsible for the ski school, skiing services, the  
23 racing program, nursery and welcome.

24 Q. Now, is the Sherburne Corporation the corporation which

1           A. It is the red one. I left it in the other room, it  
2           is the one on policy.

3           Q. I think you said that there were two others?

4           A. Yes, they are technique manuals, actually.

5           Q. I see.

6           A. Plaintiff's #22, ski school manual.

7           Q. As part of Killington advertizing did they also mention  
8           in their brochures there were safety or release bind-  
9           ings on the skis in the ski school, if you remember?

10          A. I am not certain, I believe they did.

11          Q. I am going to show you now a booklet which I think is  
12           entitled Killington Ski School Manual and which is  
13           marked Plaintiff's #22 for identification, do you  
14           recognize that?

15          A. Yes.

16          Q. And is that the Ski Instructors Manual?

17          A. It is a policy manual, yes.

18          Q. Well, it says, Ski School Manual, what do you mean by  
19           policy?

20          A. What is expected of the instructors outside of tech-  
21           nique.

22          Q. All right, and on the first page it gives the objective,  
23           does it not, the objective of the Killington Ski School?

24          A. Yes, it does.

1 Q. And at the bottom of the paragraph on that page are the  
2 words, quote, "we care" ?

3 A. That's correct.

4 Q. And of course, you do care about the safety of the per-  
5 sons who take the courses, don't you?

6 A. That is why it is in bold letters.

7 Q. Capital letters in quotes, "WE CARE" ?

8 A. That's right.

9 Q. And then if you turn over please to page 38?

10 A. (Doing so)

11 Q. That touches upon the teaching methods, does it not?

12 A. Yes.

13 Q. And on line 3, starting on line 3, does it say, they will,  
14 underline, adjust their teaching schedule to the  
15 terrain. The safety of students and also snow  
16 conditions?

17 A. Yes.

18 Q. And these are the instructions that go to the instructors?

19 A. Yes.

20 Q. Right? And then I flip over on page 29, would you flip to  
21 29, please?

22 A. (Flipping)

23 Q. That has to do with the conduct of the instructors does  
24 it not?

1 A. That's correct.

2 Q. It gives some violations and then it, on the right-hand  
3 side, it gives some penalty for the violation, doesn't  
4 it?

5 A. That's correct.

<sup>6</sup> Q. And isn't the first one "Late arrival at meeting"?

7 A. Yes.

**8 Q. Meeting places for lessons and functions?**

9      A. Yes.

10 Q. And then on the right, for example, it lists the penalties  
11 the first penalty would be a warning, correct?

12 A. That's correct.

13 Q. And the second is the one-day lay off?

14 A. Yes.

17 A. That's correct.

18 Q. And then I go down to the second one from the bottom and  
19 that is "Jeopardizing Ski School Students' Safety"?

20 A. Yes.

21 Q. And for doing that, there is no warning or no lay-off,  
22 that is termination, is that correct? .

23 A. That's correct.

24 Q. So that is a more important one, on the Sherburne

1                   Corporation's point of view?

2                   A. That's correct.

3                   Q. And then I would like to have you turn to page 33 if  
4                   you would, please?

5                   A. (Doing so).

6                   Q. And just the first paragraph there is, all that I am  
7                   going to refer to for the moment, does that one, -  
8                   this is instructions to the instructor also, isn't it?

9                   A. Yes, it is.

10                  Q. And does it say the instructor must exercise extreme care  
11                  for his students?

12                  A. Yes.

13                  Q. And under the circumstances, under no circumstances, will  
14                  students be exposed to hazardous conditions, excess-  
15                  ive speed and the like?

16                  A. Yes.

17                  Q. And is the concluding sentence of that paragraph, "Never  
18                  dismiss students or leave a student on the trail or  
19                  slope"?

20                  A. That's correct.

21                  Q. Is that one of the things which would be considered jeo-  
22                  pardizing the ski school student's safety?

23                  A. Yes.

24                  Q. And if that were done, it would result in termination, the

cross - (OROURKE)

1                   first offense?

2                   A. Yes.

3                   Q. Under the manual here?

4                   A. That's correct.

5                   Q. And the instructors, back in January of 1972 and including  
6                   Bob, were employees of the Sherburne Corporation?

7                   A. Yes.

8                   Q. No further questions.

9                   CROSS EXAMINATION BY MR. O'ROURKE:10                  Q. Did you find that Bob always complied in full with all of  
11                    those items in that manual?

12                  A. I believe we, I have no records that showed he didn't.

13                  Q. So do you feel that he has always complied with what is in  
14                    that manual?

15                    MR. BLOOMER: Object, Your Honor.

16                    THE COURT: Objection sustained.

17                    MR. O'ROURKE: We would offer Plaintiff's #22.

18                    MR. BLOOMER: We have no objections.

19                    THE COURT: #22 is received.

20                  Q. In January of 1972, Mr. Denis, when would the ski school  
21                    classes for novices commence, what time of day?22                  A. There would be the 3 sessions normally, there would  
23                    be a 10:30 session, the 12:00 o'clock session and a  
24                    2:15 session.

1 A. I believe that our rental supplies, of the number of  
2 skis, the number of the skis issued to an individual  
3 on them and do they retain rental slips.

4 Q. Would it be possible for you to obtain from the number,  
5 the persons who rented the skis back on January 16,  
6 1972?

7 A. We could, I suppose, search through by number, but it  
8 would be a very laborious job because -

9 Q. How do you index them, if you do?

10 A. We don't.

11 Q. You don't index them at all?

12 A. No.

13 Q. All right, thank you.

14 MR. BLOOMER: No further questions.

15 MR. O'ROURKE: We have no questions.

16 (WITNESS EXCUSED AND WITHDREW)

17 DELPHINE E. PLOURDE, having been recalled as a witness to tes-  
18 tify in her own behalf, was warned that  
19 she was still under oath and further  
testified on her oath, as follows:

20 DIRECT EXAMINATION BY MR. BLOOMER:

21 Q. Miss PLOURDE, you stated that you came up to ski with  
22 Robert HEINRICH?

23 A. Yes.

24 Q. Do you know where he is at the present time?

A. He lives in Connecticut.

1 Q. Have you seen him recently?

2 A. No, I have not.

3 Q. When was the last time that you saw him?

4 A. About a month after the ski trip to Killington.

5 Q. What is his present marital status?

6 A. He is married.

7 Q. Would you tell us his general appearance, size-wise?

8 A. He is about six, two, at least 160 pounds, very broad

9 shouldered.

10 Q. Did you make, strike that, please. All right, I think you

11 stated that you didn't know any of the other names or

12 addresses of any of the other students?

13 A. Just one first name.

14 Q. Sherry?

15 A. Yes, from New York.

16 Q. No further questions.

17 CROSS EXAMINATION BY MR. O'ROURKE:

18 Q. Where was Robert when you fell, Miss PLOURDE?

19 A. He was skiing. He had gone down, I don't know where he

20 was.

21 Q. He was in the class with you, wasn't he?

22 A. Yes.

23 Q. So, he had just left up there at the top of the hill?

24 A. Yes, he went down.

1 Q. How long had he been gone down before you fell?

2 A. I don't know. Not very, shortly after he left.

3 Q. Thank you.

4 MR. BLOOMER: No further questions.

5 May we have just a minute, Your Honor?

6 THE COURT: You may.

7 (WITNESS EXCUSED AND WITHDREW)

8 MR. BLOOMER: Your Honor with consent of  
9 the defense counsel we offer the life expectancy of Miss  
10 PLOURDE as 45.82 years.

11 THE COURT: That is from the date of the  
12 - from today?

13 MR. BLOOMER: Yes, that is at her present  
14 age, 45.82.

15 THE COURT: Very well.

16 MR. O'ROURKE: We have no objections to  
17 the method of proof, Your Honor.

18 MR. BLOOMER: After Dr. Radding's testimony  
19 Your Honor, by deposition, Your Honor, we offer or re-offer  
20 the bills?

21 MR. O'ROURKE: Your Honor, we have no ob-  
22 don't  
23 jections to the bills. We object to the bills being offered  
24 but we do object to their materiality and on Plaintiff's #14  
there are some writings on it, Your Honor, that we

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

-----)  
**Delphine E. PLOURDE** )  
 )  
 )  
**vs** ) Civil Action No. 6738  
 )  
**SHERBURNE CORPORATION** )  
-----)

Hearing on Defendant's Motion to Set Aside Judgment  
Order and Verdict, before The Honorable James S.  
HOLDEN, Chief, U.S. District Judge, at Rutland,  
Vermont, 18 January 1974.

**APPEARANCES:**

JOHN H. BLOOMER, Esquire  
ROBERT A. BLOOMER, Esquire  
Attorneys for Plaintiff

JAMES T. HAUGH, Esquire  
R. JOSEPH O'ROURKE, Esquire  
Attorneys for Defendant

1                   THE COURT: You may announce the case, Mr. Clerk.

2                   THE CLERK: Your Honor, the case now before the Court  
3 is Civil Action Number 6738, Delphine E. PLOURDE versus  
4 Sherburne Corporation. Robert A. and John H. Bloomer are  
5 present for the plaintiff and James T. HAUGH and Joseph  
6 O'ROURKE are present for the Defendant. The matter before the  
7 Court is on Defendant's Motion to set aside the Judgment  
8 Order and verdict.

9                   THE COURT: Mr. Haugh?

10                  MR. HAUGH: Yes, Your Honor, I shall try to be as  
11 brief as possible because I don't think there are any issues  
12 for the Judge to act on.

13                  I think the reason we are here is, Number 1, basically  
14 the failure of the Plaintiff to introduce evidence of causal  
15 connection.

16                  As I recall in this case we had two basic theories  
17 of liability. One was that the bindings were improperly ad-  
18 justed. Secondly, our ski instructor left this young lady  
19 on the slopes. Those are the only two theories that I remem-  
20 ber that were involved in this.

21                  Now, the Court directed a verdict on the theory of  
22 the ski bindings, number one, that there was no evidence that  
23 the fact of the failure of the binding failed to release to  
24 produce the fall which caused the injury.

1 Now, let's assume almost the identical same facts  
2 with these ski instructors, on the basis of the evidence  
3 considered in the light most favorable to the plaintiff, the  
4 same thing occurred, he did leave her on the slopes, left  
5 the whole class there, there isn't a scintilla of evidence  
6 in this case, Your Honor, that in any way, caused this lady  
7 to fall to produce the injuries.

8 Now, I think this is where the whole case failed.  
9 You will remember the evidence and I think Mr. BLOOMER pointed  
10 out in his Memorandum, the ski instructor skied 20 to 40  
11 yards down the hill, then the class would ski to him.

12 Now, let's assume that to be the fact and let's as-  
13 sume he was there. The facts could have happened the very  
14 same way. Any time between the time she started to move tow-  
15 ard that instructor until she got to him, until when she got  
16 to him, she could have fallen and the very same thing happened.

17 I think this is what we are trying to say. That the  
18 causation is placing the fact that he wasn't there, is not  
19 sufficient to let a Jury assume that because he wasn't  
20 there, she got ~~hurt~~ hurt.

21 The Court will remember the evidence also, that she  
22 had fallen a multiple of times during the classes and when  
23 skiing by herself, always on the same slope, always on  
24 snow. She had a baby slope.

1 Now, the mere fact that man wasn't there, is not  
2 sufficient to let this Jury decide that she fell because he  
3 wasn't there.

4 For example, as I say, he could have been standing  
5 right next to her and she could have fallen and the same  
6 result happen, you know, like, goodness, God knows she could  
7 have fallen up there, you know and the same thing would have  
8 happened. She had been tumbling around the slopes since she  
9 got there on Sunday or Monday, I guess she started, so I  
10 don't think that that is the crucial point.

11 I think it is just exactly the bindings got tied up,  
12 there wasn't a bit of evidence she was apprehensive because  
13 the man left or frightened or concerned or that she paniced.  
14 Not a bit. So, what difference did it make as far as causa-  
15 tion is concerned, if he took off and I think this is what  
16 we are talking about.

17 There is another point, but I don't really know that  
18 it makes a great deal of difference or have a great deal of  
19 bearing on what I am trying to say, but you know, we tried  
20 this case for a couple of days with bindings and machines  
21 and everything in this court room and then in one sentence,  
22 the Court summarily dismissed that by saying, well, you can  
23 dismiss all of that evidence about the bindings because it  
24 has no part in this case, yet, all the exhibits are left here.

1 Now, I don't think a jury of six can comprehend the  
2 significance of a one sentence dismissal of, forget it. I  
3 have ruled that the bindings have nothing to do with this  
4 therefore you should forget it.

16 I think the exhibits should have been  
17 as  
18 moved out of here as soon/the Court directed the motion,  
19 directed the verdict and said these, both of these exhibits  
have nothing to do with this case, they are out.

20 THE COURT: Well, . . .

21 MR. HAUGH: Granted, Your Honor, that may not have  
22 any real bearing upon the eventual outcome of the case, but I  
23 don't think six people can comprehend this sort of thing in  
24 such mass volumes.

1           THE COURT: Well, the Court wasn't mindful of it and  
2 I don't recall hearing any -

3           MR. HAUGH: Yes, I brought it to your attention in  
4 Chambers and I asked to have them removed before argument  
5 and you said "I'll take care of that in my charge, I want  
6 all the boots, bindings and machines out of here before this  
7 case is argued," and I brought it to the Court's attention in  
8 Chambers. ~~in~~

9           THE COURT: If, - that is before the Court ruled on  
10 the motion.

11           MR. HAUGH: But you decided in there you were going  
12 to rule against, you had decided in there you were going to  
13 grant our motion, then I said, "Well, the boots, the bindings  
14 and all these machines should be taken out of here now and  
15 not be left there during argument," and they were left there  
16 all during argument until after the Court charged, then  
17 taken out because I wanted my people to move that stuff and  
18 get it out of here.

19           THE COURT: Well, I don't specifically recall the  
20 request that the exhibits be taken away from the view of the  
21 Jury, maybe you did make that request to the Court, I had  
22 forgotten it if I did, but I will, I fail to see how, the  
23 fact that they were here, I don't understand there was any  
24 reference made to these particular exhibits during the course

1 of the argument.

2 MR. HAUGH: I agree with Your Honor, I am sure there  
3 wasn't, I merely say the presence of them after all the testi-  
4 mony that they heard, you just can't strike that from their  
5 mind in one sentence and say you forget this because I am  
6 charging you it has nothing to do with the case.

7 THE COURT: Very well, Mr. Bloomer?

8 MR. BLOOMER: Thank you, Your Honor, just to touch  
9 upon that, I don't remember either that Mr. Haugh requested  
10 that they be removed, I suppose the record would show whether  
11 or not he did and if my memory, it is the same as yours and  
12 Mr. Haugh made no reference to them, never pointed to them or  
13 talked about them or anything else and had I known they were  
14 or that he had that strong feeling about them, we had no  
15 such strong feeling about leaving them there, it was just a  
16 matter of convenience of leaving them there, rather than take  
17 them out.

18 I think what Mr. Haugh is talking about is proximate  
19 cause and whether or not the instructor left the student on  
20 the slope was the proximate cause of the accident and without  
21 reviewing all of the evidence in connection with it, Your  
22 Honor, we would review the fact that was the first day that  
23 the girl had skied with poles and it was also the first day  
24 that she had gone way up the mountaing with the class and the

1 testimony was that when they got down to the snow shed area  
2 the plaintiff said that the instructor said that he was late,  
3 that he apologized I guess for having taken them up there  
4 and they looked like drowned rats and left them.

5 And she further testified she had difficulty with  
6 her poles and that prior to her leaving, or prior to the  
7 instructor leaving her he would go down ahead of all the  
8 students and instruct them individually each time that they  
9 came down a portion of the mountain and that that was the  
10 way the instruction was carried on.

11 We think that it was a jury question under our law  
12 as to whether or not the fact that she left them, that he left  
13 her there, under those circumstances, was the negligence,  
14 Number One, and whether the negligence was the proximate  
15 cause of the accident.

16 The ski school regulations, I am sure the Court  
17 will recall, provided for termination if he did that, so  
18 that obviously, the jury could consider that the defendant,  
19 itself, considered that to be a very important element of  
20 the instruction, namely, that you do not leave anyone on the  
21 ski slope.

22 I think it important that she had fallen several  
23 times previously that same day and had not gotten hurt be-  
24 cause the instructor was there, to instruct as to how far you

1 go and how you try to turn, how you handle the poles, then  
2 once he left, the first fall, she took, she got out of  
3 control somehow and fell down and hurt herself and the  
4 evidence as I recall it was that was the first fall she took  
5 after he left that she just didn't know what to do, couldn't  
6 control herself on the ice, the poles bothered her, she fell  
7 down and got hurt.

8 I think it was entirely appropriate that the Court  
9 charge proximate cause as the Court did and left it to the  
10 Jury to determine whether or not it was the proximate cause.

11 MR. HAUGH: Your Honor, if I might remind Mr. Bloomer's  
12 statement, what appeared to have happened, I am sure the  
13 record will probably speak for itself. As I understand it,  
14 this young lady, some of her friends had gone up without the,  
15 instructor to the area that gondola which was away from the  
16 area where she fell, namely, Snow Shed and I have before me  
17 the transcript of her testimony about what really happened.

18 Question: What really happened here, Mrs. Plourde, isn't it  
19 that you just went out of control and fell down? I was going  
20 down the hill and turning left. Didn't you testify that your  
21 skis started going fast?" And she interrupted, "I was  
22 speaking of speed, yes. Were you in control of your skis?  
23 I was trying to gain control. Did you feel that you had  
24 control over them before you fell? To the best of my ability

1 I tried to control them. What caused you to fall, Mrs.  
2 Plourde? Well, I was worried about my poles, I didn't know  
3 what to do with them and I didn't know how to stop and taking  
4 up speed."

5 Now, there isn't a scintilla of evidence in this  
6 testimony about the fact that this man wasn't there holding  
7 her hand had anything to do with causing her to fall,  
8 especially ifhe was 40 to 60 yards down the trail. He  
9 couldn't have helped her any way, this is what I think this  
10 whole thing is about.

11 THE COURT: Well, I think there is some evidence that  
12 the instructor said that your, he is sorry he had this pro-  
13 ceedings to negotiate with the particular -

14 MR. HAUGH: Let's assume he did.

15 THE COURT: - that they weren't ready for it.

16 MR. HAUGH: Let's assume he did, I'm talking about  
17 proximate cause, what difference would that make on the  
18 testimony in this case? She doesn't say because he wasn't  
19 there, she got nervous, excited, panicked and fell down.

20 THE COURT: Well I think the evidence is that he  
21 permitted her to negotiate a dangerous course after he had  
22 left her on the slopes without any precautions for her safety.

23 The Court will deny the Motion.

24 (3:32 p.m.)

1

CERTIFICATE

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I, Herman J. Vesper, Official Court Reporter, United States District Court, For The District of Vermont, hereby certify that the foregoing 10 pages are a true and complete transcript of my verbatim stenographic notes taken of the Hearing on Defendant's Motion to Set Aside Judgment Order and Verdict in the case of DELPHINE E. PLOURDE vs SHERBURNE CORPORATION, Civil Action Number 6738, before The Honorable James S. HOLDEN, Chief, U.S. District Judge, For The District of Vermont, at Rutland, Vermont, 18 January 1974.

Herman J. Vesper  
Official Court Reporter

Rutland, Vermont

12 April 1974.

## B. THE KILLINGTON SKI INSTRUCTOR

The Killington Ski Instructor is a professional skier of exceptional skiing and teaching ability and was selected from a large number of candidates.

He maintains the highest professional standards, continually improves his professional status by individual effort and participates in clinics, training sessions, affiliations with organized skiing and various professional groups.

He is loyal to the Killington Ski School and its philosophy regarding teaching techniques and methods, the Killington Ski Area, the business community at Killington, and of course, to his fellow instructor.

He will never make negative remarks concerning any of the above outside the Ski School fraternity. Constructive criticism will be made in the proper place during a Ski School meeting.

He will never make negative comments about other ski areas and competing ski schools in public.

He will adhere diligently to all rules and policies of the Killington Ski School and the Killington Ski Area as set forth in this manual.

## B. LESSON MEETING TIME

All instructors report for work at 9:00 AM. Class lessons begin at 9:30 AM, 12:00 Noon and 2:15 PM. All instructors will be at the meeting place in full uniform and ready to ski at 9:25 AM for the morning class; at 11:55 for the Noon class; and at 2:10 for the afternoon class. A class must never leave the meeting place late as a customer's loss of lesson time is grossly unfair when he has paid his money and is there on time.

Private lessons will begin at 9:00 AM and every 30 minutes thereafter at the Snowshed, Ramshead, and Killington areas. Instructors assigned to private lesson duty must be ready to ski at 9:00 AM.

## A. CONDUCT

The following are Ski School policies and the penalties assessed for infractions of these rules.

<u>Violation</u>	<u>Penalty</u>
Late arrival at meeting places for lessons and functions.	1. Warning. 2. One day lay-off. 3. Termination of employment.
Profanity and disorderly and ungentlemanly conduct.	1. Warning. 2. Termination.
Drinking during working hours 9:30 to 4:30.	1. Warning. 2. Termination.
Drunkenness on mountain.	1. Termination.
No usage of <u>illegal drugs</u> .	1. Termination.
Jeopardizing Ski School student's safety.	1. Termination.
Skiing on closed trail or slope.	1. One week lay-off. 2. Termination.

#### D. LIABILITY

The instructor must exercise extreme care for his students, and under no circumstances will students be exposed to hazardous conditions, excessive speed and the like. Never dismiss students or leave a student on the trail or slope.

If there seems to be the possibility of a liability action against the Killington Ski Area as a result of an injury, the instructor should never admit any liability on the part of any employee of Killington or Sherburne Corporation, as it is the responsibility of a court of law to make this judgment. The instructor should never mention insurance coverage. If questioned as to whether or not Killington has any insurance, he should refer the person to the Ski School Director or an Officer of the Company.

The accident should be reported immediately to the Ski School Management, and it is most important that names and addresses of witnesses to the accident be taken. Lawsuits often occur solely because a customer is insured; and since the area is so large, they feel no one cares. Usually, if normal human response occurs between the instructor and an injured person, the latter will return to enjoy a better day of skiing at Killington.